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December 6, 2011

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania, NW
Washington, D.C. 20530

Dear Attorney General Holder:

As the Ranking Member of the House Judiciary Committee's Subcommittee on the Constitution, as well as the representative of Lower Manhattan, I am writing to you concerning credible and troubling reports of alleged police misconduct in connection with the treatment and arrests of demonstrators and other individuals involved in the Occupy Wall Street (OWS) protests in New York City, possible unlawful surveillance of individuals engaged in constitutionally protected activities, as well as restrictions on, and the arrest and mistreatment of, members of the press covering the protests.

Since protesters began the OWS demonstrations on September 17th in New York City and the "Occupy" Movement began to spread nationwide, there have been numerous reports of police misconduct by the New York Police Department (NYPD) and local law enforcement in other cities. In New York, many of these reports involve allegations of excessive force used by NYPD officers against OWS protestors. These allegations, many of which are supported by extensive documentation on video and in press accounts, involve numerous incidents over the course of the several weeks during which OWS demonstrators were present in Zuccotti Park, which is located in my congressional district.

This City indeed has a duty to protect the health and safety of all those who live and work in Lower Manhattan, as well as their right to the quiet enjoyment of their community, but that duty must always be discharged with respect for the fundamental First Amendment right to free expression, and to assemble peacefully and petition government for redress of grievances. New Yorkers have always understood that these rights need not be in conflict, and that our City has

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always been at its best when the rights of all are respected and protected by the authorities. If the allegations mentioned above are true, this would mark a very troubling diversion from that proud history.

There are a number of specific incidents that are worthy of investigation. First, on September 24th, during an OWS march, several arrests were made that involved allegations of the use of excessive force by the NYPD.¹ On October 1st, during a march on the Brooklyn Bridge, there were claims that the protestors were forced into a narrow, confined area in the street and prevented from leaving, or "kettled," and then arrested, again using excessive force. Many of the marchers allege that they were under the impression that the march was a lawful one, that they observed officers directing them onto the bridge, and that they never heard warnings that they would be subject to arrest.² Finally, on November 15th, the protestors were evicted from their encampment at Zuccotti Park in Lower Manhattan at 1 a.m. Many participants have alleged that, in doing so, the police used excessive force to intimidate, corral, and arrest protestors.³ It has been alleged that individuals who wished to leave the scene in compliance with police orders rather than be subject to arrest were barred from doing so. While the NYPD disputes the allegation that excessive force was used in any of these, or other, incidents, I believe that the recordings and videos made at the scene raise sufficient concern warranting a federal investigation of whether there was in fact police misconduct in violation of federal law, and whether these actions were taken to prevent OWS protestors from exercising their First Amendment rights.

In addition to my concerns about police misconduct with respect to OWS protestors, I am especially troubled that during and after the November 15th eviction from Zuccotti Park, the NYPD aggressively blocked journalists from reporting on the incident, and in some cases, targeted journalists for mistreatment. Individuals without press credentials were also blocked from filming events, and were, in some instances, arrested apparently for taking pictures. According to news reports, and a letter from the major daily newspapers and other major news outlets and organizations representing journalists, at least ten reporters and photographers were

¹ See, e.g., YouTube video, "NYPD Excessive force by macing Protestors during Occupy Wall Street," Sept. 24, 2011, available at <http://www.youtube.com/watch?v=MUImpfxJ8E4>.

² See, e.g., Max Read, *Police Corral, Arrest Protesters on Brooklyn Bridge*, GAWKER, Oct. 1, 2011, available at <http://gawker.com/5845775/police-corral-arrest-occupy-wall-street-protesters-on-brooklyn-bridge>.

³ See, e.g., Lee Fang, Video: New York Police Surround Zuccotti Park, Evict Occupy Wall Street During Midnight Raid (Updated), THINK PROGRESS, Nov. 15, 2011 2:07 a.m., available at <http://thinkprogress.org/special/2011/11/15/368427/midnight-raid-occupy-wall-street/>.

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arrested while trying to report on the incidents at Zuccotti Park.⁴ The NYPD forced journalists to leave Zuccotti Park, prevented members of the credentialed press from being present during the eviction, and used intimidation and physical force to prevent reporters and photographers from carrying out their journalistic functions. Many of those arrested were not charged with any offenses. Additionally, the City reportedly closed the airspace above the area in order to prevent news helicopters from recording the actions.⁵

In response to questions about these actions, Mayor Bloomberg has responded that reporters were restricted for their own protection.⁶ This justification appears to have little merit. Journalists enter war zones to inform the American people about the status of those conflicts. I think they can be trusted to assume the risks associated with covering a non-violent protest. The actions of the NYPD to prevent the press from covering the protests and the eviction affect core First Amendment values, not just the right of the press to report, but also the public's right to be informed on matters of great civic importance. Given the importance of freedom of the press to our First Amendment protections, the need for the public to know how their government is discharging its duties and the City's apparent lack of a credible rationale for taking these actions, these incidents are particularly disturbing.

Finally, I am concerned by reports that police might be monitoring houses of worship where OWS protestors have obtained shelter and sanctuary.⁷ Police surveillance of activities protected by the First Amendment must conform to the guarantees of the Constitution. Care must be exercised in the conduct of those investigations so as to protect constitutional rights. Matters investigated must be confined to those supported by a legitimate law enforcement purpose. At the very least, such investigations must not be based solely on activities protected by the First Amendment. These principles have been recognized both by the FBI's guidelines, and NYPD guidelines arising from the consent decree in *Handschu v. Special Services Division*, 475 F.Supp.2d 331 (SDNY 2007).

⁴ Letter from George Friedman, N.Y. Times; Michael Cameron, N.Y. Post; Anne Carrol, Daily News; Karen Kaiser, Associated Press; Steve Chung, WNBC-TV; Jason Conti, Dow Jones & Co.; Lucy Dalglish, Reporters Comm. for Freedom of the Press; Mickey Osterreicher, National Press Photographers Ass'n; Shmuel Bulka, Thomas Reuters; Townsend Davis, WABC-TV; Jason Criss, N.Y. Press Photographers Ass'n; Nicholas E. Posner, WCBS-TV; Gabe Pressman, N.Y. Press Club to Dep. Comm'r Paul J. Brown, N.Y. Police Dep't (Nov. 21, 2011).⁵ *Id.*

⁵ *Id.*

⁶ See Azi Paybarah, *Bloomberg: Reporters were blocked from Zuccotti Park for their own safety*, CAPITAL, Nov. 15, 2011 4:00 p.m., available at <http://www.capitalnewyork.com/article/culture/2011/11/4156011/bloomberg-reporters-were-blocked-zuccotti-park-their-own-safety>.

⁷ See Sharon Otterman, *Even in Churches, Wall Street Protesters Can't Escape Watch of Police*, N.Y. TIMES, Nov. 17, 2011, available at <http://www.nytimes.com/2011/11/18/nyregion/occupy-wall-street-protesters-even-in-churches-cant-escape-watch-of-police.html?ref=nyregion>.

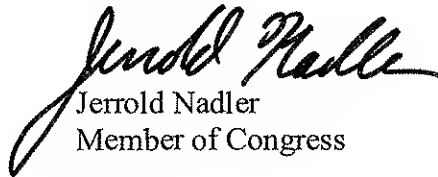
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OWS in New York is only one of several protests around the country where similar tactics have been reported. Demonstrators participating in Occupy Oakland, Occupy Berkeley, Occupy Seattle, Occupy U.C. Davis, Occupy D.C., Occupy Los Angeles and Occupy Philadelphia have all made public videos and recordings showing police using significant and unwarranted force in making arrests.⁸

Based on these serious allegations, I urge you initiate an investigation into law enforcement activities surrounding the Occupy Wall Street protests, and similar events in other cities, to determine whether the unlawful use of force, or the unlawful targeting of individuals based on their participation in constitutionally protected activities, occurred. Specifically, I urge you to determine whether these actions constituted a deprivation of rights under color of law in violation of 18 U.S.C. §§241 and 242, whether the NYPD engaged in a pattern or practice of conduct that deprived individuals of rights protected by the Constitution or laws of the United States in violation of 42 U.S.C. § 14141, and what can be done to prevent future similar actions that violate people's civil and constitutional rights under color of law in these and similar situations.

Thank you for your attention to this important matter. I look forward to your timely response.

Sincerely,



Jerrold Nadler
Member of Congress

⁸ See Kate Linthicum, Joel Rubin and Andrew Blankstein, *Occupy L.A.: More Than 200 Arrested in Peaceful Sweep*, L.A. TIMES, Nov. 30, 2011, available at <http://latimesblogs.latimes.com/lanow/2011/11/occupy-la-non-violent-dismantling-deemed-a-success.html>; Miriam Hill, Melissa Dribben, and Troy Graham, *Police Clear Occupy Encampment, 52 Arrested*, PHILADELPHIA INQUIRER, Nov. 30, 2011, available at http://articles.philly.com/2011-11-30/news/30463314_1_protesters-police-horse-three-police-officers